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09/849,322	05/04/2001	Paul F. Klein	G&C 30695.21-US-U1	9218

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EXAMINER
BAYARD, DJENANE M

ART UNIT	PAPER NUMBER
2141	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/849,322	KLEIN, PAUL F.
	Examiner	Art Unit	
	Djenane M. Bayard	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 July 2005*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-14,16-27 and 29-39* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-14, 16-27 and 29-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☒ Other: *Pre-Appeal Brief Review*

DETAILED ACTION

1.   This is in response to Pre-appeal brief filed 7/15/05 in which claims 1-39 are pending.

Response to Arguments

2.   <u>Calibrated Object library on a server</u>

Applicant argues that the claim limitation relating to a calibrated object library on a

server is not met or disclosed by Borella. As per applicant's specification "<u>Objects in object</u>

<u>library</u> 114-118 are conceptually duplicate except that they contain less data while conveying

equivalent meanings. As described above, an example of this kind of adaptable object is a

graphic that can be made smaller or larger, but still retain its visual meaning. If the network

connection 102 speed between client 104 and server 106 proves to be measured as very slow,

below a threshold acceptable to client 104 and server 106, a smaller object may be chosen from

the <u>object library</u> (small) 118. If the network connection 102 speed is measured to be very fast, a

larger object may be chosen from <u>object library</u> (large) 114. Thus, client 104's request has been

adapted to fit the optimal performance of the current network connection 102 (See paragraph

[0038], Pub No. 2001/0029537, Klein). Therefore, "calibrated object library" claimed by the

applicant is an arbitrary name for a server that stores adaptable object/ information depending on

the network latency. Borella clearly teaches "after a network latency is determined, the web

server determines an amount of original message. However, Borella teaches "web server

determines an amount of original electronic content to be send to the user computer using pre-

determined cut-off latencies. The pre-determined cut-off latencies allow different amounts (e.g.

<u>different version</u>) of the original content to be sent to the user computer. (See col. 6, lines 1-5).

It is inherent that If Borella teaches sending a <u>different version</u> of the original content based on

the network latency, that Borella teaches a "calibrated object library on a server" that stores

adaptable object/information.

Client based transmission of request, receipt of requested information, and calculation of

response time

        Applicant argues "that certain information is requested by the client and received back at

the client." Furthermore, Applicant argues that Borella fails to meet does not send the requested

information back to the client. However, It is well known in the art that when a client is

transmitting a request, the connection is established by the client by sending ICMP packets in

order to find and locate the server (ex. DNS). Furthermore, Borella clearly teaches wherein the

network latency is determined by transmitting a small number of ICMP packet ping packets to

the user computer (See col. 4, lines 65-67 and col. 5, line 1).

Round-trip response time as the time from a client request to a server through the obtaining of

the object from the server.

        Applicant argues that "the claimed round-trip response time is calculated based on the

time form a client request (to a server) through the obtaining of the request object at the client

(from the server). Such a request clearly does not include client based delays". However, the

claimed limitation is silent regarding the request not including client based delays." However,

applicant's arguments have been considered but are moot in view of the new ground(s) of

rejection.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

4.   Claims 1-7, 9, 12-20, 25-33, 35, 39 rejected under 35 U.S.C. 103(a) as being unpatentable

over U.S. Patent 6,182,125 to Borella et al in view of U.S. Patent Application No. 2004/0153792

to Merriam.

a.   As per claims 1 and 27, Borella et al teaches a computer-implemented method for

obtaining information across a network comprising: determining a speed of a network connection

to which a computer is attached by (See col. 5, lines 8-18): 1) A client transmitting a request,

across the network connection, to a calibrated object library on a server, for an object of pre-

known size and properties (See col. Col. 4, lines 65-67 and col. 5, line; 2)) and obtaining

information from across the network connection based on the speed of the network connection,

wherein a size of the information to be obtained decreases as the speed of the network

connection decreases (See col. 5, lines 62-67 and col. 6, lines 1-8). Furthermore, Borella et al

fails to teach obtaining the object of the pre-known size and properties from across the network

connection; and measuring a round-trip response time calculated form the transmitting of the

request to completion of the obtaining of the object form across the network connection (See

col. 5, lines 27-44, Network Latency is determined by sending a small portion the requested

original electronic content to the user computer and using the time transmission of the one

complete electronic HTML page and reception of the request can be used as a round-trip network

latency estimate. However, Borella fails to teach calculating the round-trip delay without client

based delays.

Merriam teaches <u>obtaining the object of the pre-known size and properties from across</u> <u>the network connection; and measuring a round-trip response time calculated form the</u> <u>transmitting of the request to completion of the obtaining of the object form across the network</u> <u>connection without delays (See page 4, paragraph 0040]).</u>

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Merriam in the claimed invention of Borella et al in order to allow a technician to determine problems associated with the network (See page 4, paragraph [0040]).

b.   As per claim 14, Borella et al teaches a computer-implemented system for obtaining information across a computer network comprising: (a) a client (See col. 2, lines (10-11); (b) an adaptive agent executing on the client, wherein the adaptive agent is configured to: (i) determine a speed of a network connection to which a computer is attached; <u>A client transmitting a request,</u> <u>across the network connection, to a calibrated object library on a server, for an object of pre-</u> <u>known size and properties; 2) obtaining the object of the pre-known size and properties from</u> <u>across the network connection ; and measuring a round-trip response time calculated form the</u> <u>transmitting of the request to completion of the obtaining of the object form across the network</u> <u>connection</u> See col. 5,lines 27-44, Network Latency is determined by sending a small portion the requested original electronic content to the user computer and using the time transmission of the one complete electronic HTML page and reception of the request can be used as a round-trip network latency estimate); and (ii) obtain information from across the network connection based on the speed of the network connection, wherein a size of the information to be obtained decreases as the speed of the network connection decreases (See col. 5, lines 62-67 and col. 6, lines 1-8). However, Borella fails to teach calculating the round-trip delay without client based delays.

Merriam teaches <u>obtaining the object of the pre-known size and properties from across</u> <u>the network connection; and measuring a round-trip response time calculated form the</u> <u>transmitting of the request to completion of the obtaining of the object form across the network</u> <u>connection without delays (See page 4, paragraph 0040]).</u>

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Merriam in the claimed invention of Borella et al in order to allow a technician to determine problems associated with the network (See page 4, paragraph [0040]).

c.   As per claims 2, 15 and 28, Borella et al in view of Merriam teaches wherein the determining a speed of a network connection comprises: transmitting a request for information of a pre-known size across the network connection (See col. 5, lines 8-10, Remarks: ICMP Ping packets are a known size); obtaining the information of the pre-known size from across the network connection; and measuring a round-trip response time calculated from the transmitting of the request to completion of the obtaining of the information from across the network connection (See col. 5, lines 16-18).

d.   As per claims 3, 16 and 29, Borella et al in view of Merriam teaches wherein the determining a speed of a network connection comprises pinging a host where the information is stored from across the network connection (See col. 5, lines 8-10).

e.   As per claims 4, 17 and 30, Borella et al in view of Merriam teaches wherein the information comprises graphics (See col. 6, lines 50-60).

f.   As per claims 5, 18 and 31, Borella et al in view of Merriam teaches wherein the information to be obtained is reduced in size such that the graphic is physically smaller visually as the speed of the network connection decreases (See col. 6, lines 60-67).

g.   As per claims 6, 19 and 32, Borella et al in view of Merriam teaches wherein the information to be obtained is reduced in size such that color is diminished from the graphic as the speed of the network connection decreases (See col. 7, lines 6-19).

h.   As per claims 7, 20 and 33, Borella et al in view of Merriam teaches wherein the

information to be obtained is reduced in size such that color is removed and shades of gray are

reduced from the graphic as the speed of the network connection decreases (See col. 7, lines 6-

19).

i.   As per claims 9 and 35, Borella et al in view of Merriam teaches wherein the information

is obtained from a server across the network connection to a client (See col. 4, lines 33-40).

j.   As per claim 12, Borella et al in view of Merriam teaches determining particular

information to obtain based on the speed of the network connection; and obtaining the particular

information from the server (See col. 6, lines 1-15).

k.   As per claims 13 and 39, Borella et al in view of Merriam teaches issuing a request for

information (See col. 4, lines 32-36); transmitting the speed of the network connection to the

server; and obtaining particular information from the server, wherein the server determines the

particular information based on the speed of the network connection (See col. 5, lines 43-46).

l.   As per claim 22, Borella et al teaches wherein the adaptive agent is configured to obtain

the information from a server across the network connection (See col. 3, lines 10-20).

m.   As per claim 25, Borella et al in view of Merriam teaches wherein the client is further

configured to: determine particular information to obtain based on the speed of the network

connection; and obtain the particular information from the server (See col. 4, lines 33-40).

n.   As per claim 26, Borella et al in view of Merriam teaches wherein the client is further

configured to: issue a request for information; transmit the speed of the network connection to

the server; and obtain particular information from the server, wherein the server determines the

particular information based on the speed of the network connection (See col. 4, lines 33-40).

o.   As per claims 8, 21 and 34, Borella et al in view of Merriam teaches the claimed

invention as described above. However, Borella fails to teach wherein the information is

obtained across the network connection from one or more libraries that maintain the information

in various sizes.

Merriam teaches wherein the information is obtained across the network connection from

one or more libraries that maintain the information (See page 4, paragraph [0038])

It would have been obvious to one with ordinary skill in the art at the time the invention

was made to incorporate wherein the information is obtained across the network connection from

one or more libraries that maintain the information as taught by Merriam et al in the claimed

invention of Borella et al in view of Merriam in order to gather components of the performance

time to download objects 9See page 4, paragraph [0034]).

5.   Claims 10-11, 23-24, 36-37 and 38 are rejected under 35 U.S.C. 103(a) as being

unpatentable over U.S. Patent 6,182,125 to Borella et al in view of in view of U.S. Patent

Application No. 2004/0153792 to Merriam as applied to claims 1,14 and 27 above, and further in

view of U.S. Patent No. 6,212,564 to Harter et al.

a.   As per claim 10, 36 Borella et al in view of Merriam teaches the claimed invention as

described above. However, Borella et al fails to teach wherein the determining a speed is

performed by an applet obtained by the client.

Harter et al teaches wherein the determining a speed is performed by an applet obtained

by the client (See abstract).

It would have been obvious to one with ordinary skill in the art at the time the invention was

made to incorporate wherein the determining a speed is performed by an applet obtained by the

client as taught by Harter et al in order to optimized the client based on characteristics

performance (See abstract).

b.   As per claims 11, 24 and 37, Borella et al in view of Merriam teaches the claimed

invention as described above. However, Borella et al in view of Merriam fails to teach wherein

an applet tag corresponding to the obtained applet is present in a web page obtained by the client,

wherein the applet tag is dynamically inserted into the web page by the server.

Harter et al teaches wherein an applet tag corresponding to the obtained applet is present

in a web page obtained by the client, wherein the applet tag is dynamically inserted into the web

page by the server (See col. 3, lines 11-31).

It would have bee obvious to one with ordinary skill in the art at the time the invention

was made to incorporate wherein an applet tag corresponding to the obtained applet is present in

a web page obtained by the client, wherein the applet tag is dynamically inserted into the web

page by the server as taught by Harter et al in the claimed invention of Borella et al in view of

Merriam in order to optimize the client based on characteristics performance (See abstract).

c.   As per claim 23, Borella et al in view of Merriam teaches the claimed invention as

described above. However, Borella et al in view of Merriam fails to teach wherein the adaptive

agent is an applet.

Harter et al teaches wherein the adaptive agent is an applet (See col. 4, lines 41-65).

It would have been obvious to one with ordinary skill in the art at the time the invention

was made to incorporate wherein the adaptive agent is an applet as taught by Harter et al in the

claimed invention of Borella et al in view of Merriam in order to optimize the client based on

characteristics performance (See abstract).

d.   As per claim 38, Borella et al in view of Merriam teaches the claimed invention as

described above. However, Borella et al in view of Merriam fails to teach the client determining

particular information to obtain based on the speed of the network connection; and the client

obtaining the particular information from the server.

Harter et al teaches the client determining particular information to obtain based on the

speed of the network connection; and the client obtaining the particular information from the

server (See col. 4, lines 31-50).

It would have been obvious to one with ordinary skill in the art at the time the invention

was made to incorporate the client determining particular information to obtain based on the

speed of the network connection; and the client obtaining the particular information from the

server as taught by Harter et al in the claimed invention of Borella et al in view of Merriam in

order to optimize the client based on characteristics performance (See abstract).

Conclusion

6.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878.

The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Djenane Bayard

Patent Examiner

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